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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,793	12/18/2001	Hendricus W. J. Van Tol	00771.00025	4261

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EXAMINER

VALENTI, ANDREA M

ART UNIT PAPER NUMBER

3643

DATE MAILED: 09/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/914,793

Applicant(s)

VAN TOL ET AL.

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-9,11,12,14,21 and 24-26 is/are rejected.
- 7) ☒ Claim(s) 10,13,15-20,22 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The application number that appears in the upper left hand corner of the response filed 7 July 2004 is not correct, '10/090,729' should be --09/914,793--

### ***Claim Objections***

Claim 1 is objected to because of the following informalities:

First line of claim 1, 'cuttings having no support in the ground or soil,' should be --cuttings, said holder and plant cuttings having no support in the ground or soil,--

This correction is necessary since it is unclear if the plant cuttings or the holder or both have no support in the ground, examiner believes that applicant was referring to both the holder and plant cuttings regarding this statement.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-8, 11, 12, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent JP401267180A to Tashiro.

Regarding Claims 1 and 6, Tashiro teaches a holder for transport having no support in the ground or soil with at least one carrier (Fig. 11 #55) and a series of clamping elements (Fig. 11 #31 and Fig. 8) which are fixed to the carrier and which are each adapted to clamp a plant cutting (Fig. 8 #32), wherein the clamping elements are

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fixed to the carrier such that plant cuttings clamped in the clamping elements extend substantially parallel to each other, and the center of each of the clamping elements is situated substantially in the same central plane; and the holder transports the whole plant cuttings placed in the holder (Tashiro English abstract) and the central plane extending at a right angle to the plant cuttings.

Regarding Claim 3, Tashiro teaches the carrier extends as a strip (Fig. 11 #55) and that the clamping elements (#31) are fixed to the carrier at regular mutual distances

Regarding Claim 4, Tashiro discloses that the clamping elements (#31) are each fixed on the same side of the carrier (Fig.11 #31).

Regarding Claim 5, Tashiro discloses that the mutual distance between the clamping elements on one side of the carrier is greater than or equal to the mutual distance between the center of the clamping elements so that two carriers with their clamping elements **can be** placed between each other (Fig. 11).

Regarding Claim 7, Tashiro discloses the carrier is divided into substantially rigid pieces (Fig. 11 #51 and 55), which are couple in mutually flexible manner.

Regarding Claim 8, Tashiro teaches the carrier has been made **substantially** from rigid material (Fig. 11).

Regarding Claim 11, Tashiro teaches the clamping elements (Fig. 8) each have at least two parts, at least one of which is connected resiliently to the carrier (Fig. 11 #31).

Regarding Claim 12, Tashiro discloses that the parts each take substantially the form of a semi-cylindrical surface, wherein both parts are connected to the carrier such

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that in the non-loaded situation both parts are separated on either side by a narrow gap (Fig. 8 the top of the cylinder clamps the stem and the bottom of the cylinder is the second part).

Regarding Claim 21, Tashiro teaches applicant's broad claim language that each of the parts of the clamping elements are connected to the carrier for tilting on an axis extending substantially at a right angle to the plane of the carrier (Fig. 11 #31 and Fig. 13 #31).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 14, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent JP401267180A to Tashiro.

Regarding Claim 9, Tashiro is silent on the clamping elements have been made from softer material than the carrier. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely an engineering design choice selection of a known-material for intended use for durable and lightweight design for efficient shipping.

Regarding Claim 14, Tashiro is silent on the inner wall of both parts of the clamping elements together have a substantially oval section. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the

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invention since the modification is merely a change in size/shape for an efficient use of space and for aesthetic design appeal and does not present a patentably distinct limitation.

Regarding Claim 24, Tahsiro is silent on the holder being manufactured by injection molding or thermoforming of plastic. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely an engineering design choice of a selection of a known manufacturing method selected to achieve a durable product in an efficient manner and does not present a patentably distinct limitation.

Regarding Claims 25 and 26, Tashiro teaches the carrier is manufactured from flat material in which at least three lips (Fig. 11 #55 and 54) at the position of each clamping element (Fig. 11 #31), which lips are adapted to fixedly clamp the plant. Tashiro is silent on the holder being manufactured out of paper or plastic and is punch formed. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Tashiro since the modification is merely the selection of a known material for intended use in order to reduce manufacturing costs.

### ***Allowable Subject Matter***

Claims 10, 13, 15-20, 22, and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 7 July 2004 have been fully considered but they are not persuasive.

Examiner maintains the rejection in view of Tashiro. Tashiro does teach a series of clamping elements (Tashiro Fig. 8 and 11 #33 and #35) which are fixed to a carrier (Tashiro Fig. 11 #55) and which are each adapted to clamp a plant cutting, wherein the center of each of the clamping elements is situated substantially in the same central plane, wherein the central plane extends at a right angle to the plant cuttings (Tashiro Fig. 11).

The term 'fixed' can be defined as to hold or direct and Fig. 11 of Tashiro illustrates that the carrier (element #55) is holding and directing the plant cuttings and their clamping elements. The term 'clamp' can be defined as to hold tightly or a device use to bind or constrict. The complete vial device illustrate in Tashiro Fig.8 illustrates that the plant cuttings are constricted and held tightly and are therefor clamped. Also since the planting cuttings are contained in the tubes of Tashiro they are inherently clamped when the tube is clamped in the carrier since they are functioning as one unit at that point. When something is fixed to something else it does not have to be joined permanently, but can merely be attached for a desired duration. Applicant has not presented structural limitations that distinguish applicant's invention over the teachings of the prior art.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

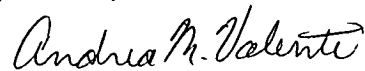


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For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the

Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

31 August 2004



Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600

9/1/04